

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

April 8, 2011

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

Kauai

Authorize the Chairperson of the Department of Land and Natural Resources to Negotiate Terms and Conditions and Sign a Memorandum of Understanding between the Department and the Agribusiness Development Corporation, regarding the Puu Lua Reservoir; TMK No. (4) 1-4-001:002 (portion)

Applicant:

The Department of Land and Natural Resources (Department), Land Division

Legal Reference:

Section 171-6, Hawaii Revised Statutes, as amended

Location:

The Puu Lua Reservoir is situated on TMK No. (4) 1-4-001:002 (por.) owned by the State of Hawaii, as shown on the attached map labeled Exhibit A

Background:

At its meeting of December 9, 2005, under agenda item D-2 (Exhibit B) the Board of Land and Natural Resources ("Board") approved to recommend to the Governor, a set aside to Agribusiness Development Corporation ("ADC") for irrigation system and Waimea (Mauka) hydro-electric power generation plant purposes at Waimea, Kauai, TMK Nos. (4) 1-2-1; various, 1-2-2:various; 1-4-1:various, and 1-5-1:various. The Board further amended its approval by adding as a condition that ADC work cooperative with the Division of State Parks to assure that ADC's management and control of the irrigation system does not adversely affect Kokee State Park or its tenants.

On August 18, 2009, Governor's Executive Order 4287 (Exhibit C) was issued setting aside for the public purpose, the irrigation system, including the land underneath the water and the taking of water to be under the control of the ADC. Although the Puu Lua Reservoir ("Reservoir") is not included in the EO, the ADC took the initiative to plan for remediation and improvements to the Structure, upon receipt and review of the Final Phase I Visual Inspection Report (February 2009).

Although the title to the land beneath the Reservoir remains with the Department, this MOU is to confirm and clarify that the ADC, on behalf of the Department, shall control and manage the Reservoir and assume responsibility for complying with all regulatory requirements of the State's Dam Safety program, until such time when the EO is amended or replaced with a new EO to include that Reservoir. The MOU further clarifies that the control and management include the improvements, maintenance and operations of the Reservoir. Attached is a draft of the MOU (Exhibit D).

Recommendation that the Board:

Authorize the Chairperson to negotiate terms and conditions and sign on behalf of the Department and the Board of Land and Natural Resources a Memorandum of Understanding between the Board and the Agribusiness Development Corporation, subject to review and approval as to form by the Department of the Attorney General.

Respectfully Submitted,

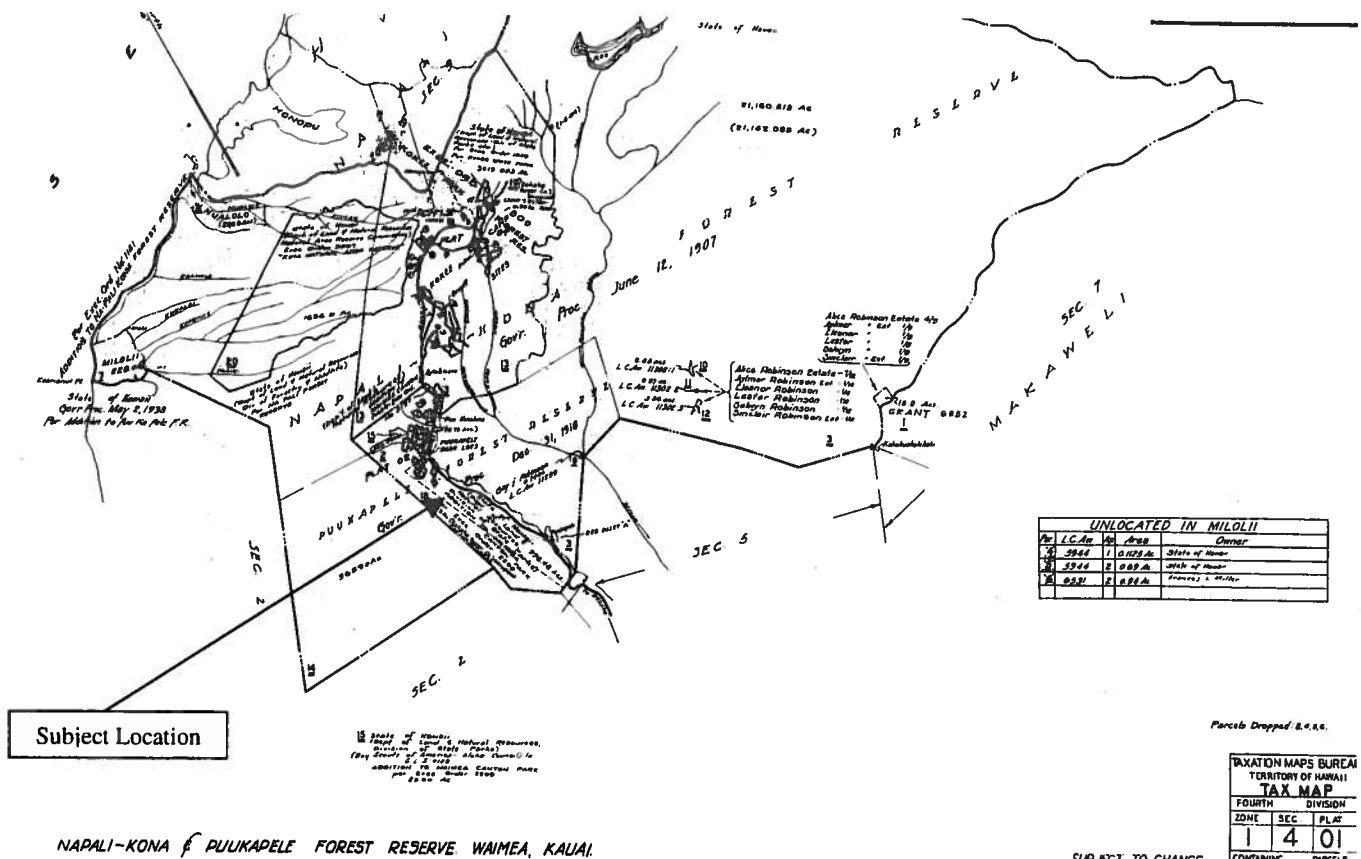
  
Morris M. Atta  
Special Projects Coordinator

APPROVED FOR SUBMITTAL:

  
William J. Aila, Jr.; Chairperson

Attachments

**Location of Puu Lua Reservoir  
TMK No. (4) 1-4-001:002(portion)**



**EXHIBIT "A"**

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

AMENDED

December 9, 2005

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

PSF No.: 05KD-234

KAUAI

Set Aside to Agribusiness Development Corporation for  
Irrigation System and Waimea (Mauka) Hydro-Electric Power  
Generation Plant Purposes, Kekaha and Waimea Valley  
including Hawaiian Home Lands, Kauai, Tax Map Keys: (4) 1-2-  
1:various; 1-2-2:various; 1-4-1:various; and 1-5-1:various.

APPLICANT:

Agribusiness Development Corporation (ADC)

LEGAL REFERENCE:

Section 171-11, Hawaii Revised Statutes (HRS), as amended.

LOCATION:

Portion of Government lands of Kekaha and Waimea Valley situated  
at Waimea, Kauai, identified by Tax Map Keys: (4) 1-2-1:various;  
1-2-2:various; 1-4-1:various; and 1-5-1:various, as shown on the  
attached map labeled Exhibit A.

AREA:

Various.

ZONING:

State Land Use District: Agriculture  
County of Kauai CZO: Agriculture

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State  
Constitution: YES ☒ NO ☐

CURRENT USE STATUS:

Encumbered by Revocable Permit No. S-7252, Controlled Environment  
<sup>as amended</sup>

APPROVED BY THE BOARD OF  
LAND AND NATURAL RESOURCES  
AT ITS MEETING HELD ON

December 9, 2005

EXHIBIT "B" D-2

Aquaculture Technology, Inc. (CEATECH); Syngenta Seeds, Inc.; Pioneer Hi-Bred International, Inc.; Gay & Robinson, Inc.; Wally Johnson, Permittee, for operation and maintenance of a portion of an existing water transportation system; and taking water from within the Kokee and Kekaha Ditches purposes. Note: Based on U.S. Bankruptcy Court ruling the Land Board on July 22, 2005, under agenda Item D-2, consented to the assignment of CEATECH's interest to Sunrise Capital, LLC or its designee.

Encumbered by Revocable Permit No. S-7359, Agribusiness Development Corporation for hydro-electric power generation and structures purposes.

PURPOSE:

Irrigation system and Waimea (Mauka) hydro-electric power generation plant purposes.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

This action before the Board is merely a transfer of management jurisdiction and does not constitute a use of State lands or funds, and therefore, this action is exempt from the provisions of Chapter 343, HRS, relating to environmental impact statements.

Inasmuch as the Chapter 343 environmental requirements apply to Applicant's use of the lands, the Applicant shall be responsible for compliance with Chapter 343, HRS, as amended.

APPLICANT REQUIREMENTS:

None

BACKGROUND:

In 2001, AMFAC closed Kekaha Sugar Company (General Lease No. S-4222), ending nearly 100 years of sugar cultivation on some 28,000 acres of State and Hawaiian Home Lands at West Kauai. In anticipation of the closure, at its meeting of October 27, 2000, under agenda item D-29, the Board authorized the issuance of five (5) revocable permits to: Syngenta Seeds (corn seed), Pioneer Hi-Bred International (corn seed), Wally Johnson (diversified farming), Controlled Environment Aquaculture Technology (aquaculture), and Gay & Robinson (sugar). In a separate action, under agenda item D-30, the Board authorized the issuance of a revocable permit for the operation and maintenance of a portion of an existing water transportation infrastructure system and to take water from within the existing Kokee Ditch and Waimea Ditch. Permit rent for the first six months was waived to allow the users an opportunity to move onto the property, form a cooperative, and undertake the critical maintenance of important infrastructure. For the irrigation system, Revocable Permit No. S-7252 was executed on April 23, 2003. When the permits were originally issued, it was the intention of the permittees to quickly form a cooperative that would

then apply for a direct lease covering the property. The co-op was to then sublease to users and manage the water system supported by funds provided by members of the co-op.

At its meeting of October 6, 2001, under agenda item D-11, the Land Board tabled the idea of having the co-op apply for the master lease and authorized the issuance of a direct lease and a revocable permit to ADC. Staff had prepared several versions of a lease and revocable permit with ADC, although none have been acceptable to the ADC Board. In meetings with ADC and the Departments staff, it had been determined that issuance of a set aside to ADC is preferred over a long-term lease and better achieves the purposes of both entities. The set aside would allow ADC complete management responsibility without the requirement of returning to the Land Board for various operational and management issues. Once the set aside is finalized, the ADC would enter into leases with the existing revocable permit holders and facilitate others who desire to occupy portions of State lands.

Kekaha Sugar generated power for its operations at the Mauka Hydro located at the bottom of Waimea Canyon. For some unknown reason, the hydro site was not under any lease or permit. The Mauka Hydro is necessary for the economic operation of the electrical systems that provide power to the current revocable permit holders on the Kekaha lands and for the operation of the pumps that dewater the Mana plain. ADC had made significant improvements to the Mauka Hydro over the past few years with the aid of funding from the U.S. Navy Pacific Mille Range Facility. Continued use and operation of the Mauka Hydro is required for the effective management of the Kekaha lands to be set aside to ADC. ADC had entered into a Purchase Power Agreement with Kauai Island Utilities Cooperative (KIUC) where the parties have agreed to make deliveries of energy to each other and in emergency situations. About two-thirds of the energy delivered by ADC is generated at the Mauka Hydro.

At its meeting of July 11, 2003, under agenda item D-10, the Land Board approved to recommend to the Governor a set aside to ADC and the issuance of a revocable permit to ADC for the Mauka Hydro. Revocable Permit No. S-7359 was executed on January 7, 2004. The Acting Governor signed Executive Order No. 4007 on September 16, 2003.

REMARKS:

The Waiawa hydroelectric power plant and portions of the irrigation system (or ditch) is within Governor's Executive Order No. 4007. Other sections and the Waimea (Mauka) hydro-electric power generation plant is outside Governor's Executive Order No. 4007. The irrigation system (or ditch) originates from Puu Ka Pele Forest Reserve and the Napali-Kona Forest Reserve then runs through the Department of Hawaiian Home Lands and finally to Governor's Executive Order No. 4007.

This request is to address only the irrigation system (or ditch) including the land underneath the water and the taking of the water. ADC is requesting the Land Board's favorable consideration for the set aside. The set aside will allow ADC flexibility in managing and operating the irrigation system (ditch) for the agricultural community, the hydro-electric power generator plants, and other common infrastructure that were traditionally managed by the former Kekaha Sugar Company.

Currently, ADC along with its tenants and contractors are managing the irrigation system and the Mauka Hydro. There is no alternative agency to manage the irrigation system (or ditch) or the Mauka Hydro for the West side of Kauai.

Comments were solicited and their statements are listed below:

|                                |   |
|--------------------------------|---|
| County of Kauai, Planning      | No response                             |
| County of Kauai, Public Works  | No comments                             |
| County of Kauai, Dept of Water | No comments                             |
| DHHL                           | No response                             |
| DLNR Aquatic Resources         | No response                             |
| DLNR Forestry & Wildlife       | No response                             |
| DLNR Historic Preservation     | No historic properties will be affected |
| DLNR State Parks               | Comments attached as Exhibit B          |
| DLNR Water Resource Management | No objections                           |
| DOA                            | No response                             |
| US Dept of Navy                | No response                             |
| NRCS                           | No response                             |
| OHA                            | No response                             |

Copies of comments received were forwarded to ADC. Staff reviewed Governor's Executive Order Nos. 1509, 1510, 2197, and 2209. All streams, water ways and water systems, springs, wells and reservoirs, and all riparian and other rights appurtenant to the land were excluded from the park and forest reserves. Land Division lacks the expertise to manage former sugar plantation irrigation systems and their infrastructures (ie. Hamakua, Kau, Kalepa). It is unlikely Division of State Parks has that expertise. There are only two (2) agencies excluding the County's Water Department, and they are the Department of Agriculture (DOA) and ADC capable of managing former sugar plantation irrigation systems and their infrastructures. DOA has expressed no interest. ADC has agreed to open dialog with Division of State Parks staff on Kauai to iron out any misunderstandings.

December 9, 2005

This intricate system (from the mountain to the sea) needs to be maintained to lessen flood threats to Kekaha town, the Pacific Missile Range Facility, ADC's agricultural tenants, Polihale State Park, Waimea Valley taro farmers, etc.

The set aside staff is requesting does not allow ADC to sell the State-owned improvements, the land underneath the water, and the water. It is only for ADC's jurisdiction control and management.

The existing Revocable Permit No. S-7252 and S-7359 will be terminated upon issuance of the set aside.

RECOMMENDATION:

That the Board, subject to Applicant fulfilling the Applicant Requirements above:

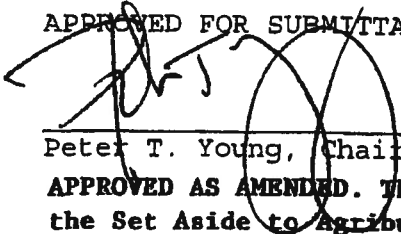
1. Approve of and recommend to the Governor the issuance of an executive order setting aside the subject lands to Agribusiness Development Corporation under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
  - A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
  - B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
  - C. Review and approval by the Department of the Attorney General; and
  - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

*Charlene E. Unoki*

*but* Charlene E. Unoki  
Assistant Administrator

APPROVED FOR SUBMITTAL:

  
\_\_\_\_\_  
Peter T. Young, Chairperson

**APPROVED AS AMENDED.** The Board amended staff's recommendation by adding as a condition, the Set Aside to Agribusiness Development Corporation ("ADC"), that ADC work cooperatively with the Division of State Parks, DLNR, to assure that ADC's management and control of the irrigation system do not adversely affect the Kokee State Park or the Lessees at Kokee State Park.





**KOKEE AND KEKAHA DITCHES**

Waimea, (Kona) Kona, Hawaii.

Scale: 1 inch = 4000 feet

NOTE: 2.0000 ft. of Kokee Ditch (Ditch, 3.0000 ft. of Kokee Ditch (Ditch) and 15.0000 ft. of Kekaha Ditch (Ditch) are shown on this map.

NOTE: Reduced from U.S. Geological Survey Quadrangle (Topographic) maps. Job No. 1-4150

TAX MAP KEYS: 1-2-01, 1-3-02, 1-4-01, 1-5-01

U.S.S. PLAT 3

**EXHIBIT "A"**

LINDA LINGLE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
DIVISION OF STATE PARKS  
POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

November 9, 2005

MEMORANDUM

To: Charlene Unoki, District Land Agent  
Land Division

From: Daniel S. Quinn, Administrator *DS Quinn*  
Division of State Parks

Subject: Set Aside for Irrigation System and Hydroelectric Power Generation Plant,  
Waimea, Kaua'i

We have reviewed the proposed set aside of land to Agribusiness Development Corporation (ADC) and prefer that the disposition for the Kōke'e irrigation system be by a long-term lease. We are strongly opposed to the withdrawal of park lands within Kōke'e and Waimea Canyon State Parks and the subsequent setting aside of those park lands to the Agribusiness Development Corporation (ADC).

While the proposed set aside would "allow ADC complete management responsibility without the requirement of returning to the Land Board for various operational and management issues", we believe that it would be at the expense of park values (for example, "wilderness", scenic, and biological) and public recreational use.

In addition, this proposed action would partition the parks and require State Parks to obtain a lease and/or easements for existing and future park uses over the lands set aside to ADC. It should also be noted that Kōke'e Ditch tunnels under the State highway and several recreation residences.

If you have questions, or need additional information, please contact Wayne Souza, Kaua'i Parks District Superintendent at 4-3446 or by email.

c: Wayne Souza

EXHIBIT "B"

PETER T. YOUNG  
CHAIRPERSON  
BOARD OF LAND AND NATURAL  
RESOURCES  
COMMISSIONER OF LAND AND NATURAL  
RESOURCES  
DEPUTY DIRECTOR - LAND  
2005 NOV 14 3:13  
DEAN NAKANO  
DEPUTY DIRECTOR - WATER  
AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCES  
MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES  
ENFORCEMENT  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAOLOAWE ISLAND RESERVE  
COMMISSION  
LAND  
STATE PARKS



FOR IRRIGATION SYSTEM, INCLUDING THE LAND UNDERNEATH THE WATER AND THE TAKING OF WATER, to be under the control and management of the Agribusiness Development Corporation, a public body corporate and politic and an instrumentality and agency of the State of Hawaii, covering parcels of land situate at Waimea (Kona), Kauai, Hawaii, identified as "Kokee and Kehaha Ditches," consisting of the Kokee (Main) Ditch, containing an area of 14.6 miles, more or less, and the Kokee Ditch (West Branch), containing an area of 1.5 miles, more or less, with a total length of 16.1 miles, more or less, and Kekaha Ditch, with a total length of 9.6 miles, more particularly described in Exhibit "A" and delineated on Exhibit "B," both of which are attached hereto and made parts hereof, said exhibits being respectively, a survey description prepared by the Survey Division, Department of Accounting and General Services, State of Hawaii, designated C.S.F. No. 15,669 and dated October 24, 1968, and survey map designated H.S.S. Plat 3087-B.

SUBJECT, HOWEVER, to the condition that upon cancellation of this executive order or in the event of non-use or abandonment of the premises or any portion thereof for a continuous period of one (1) year, or for any reason whatsoever, the Agribusiness Development Corporation, a public body corporate and politic and an instrumentality and agency of the State of Hawaii shall, within a reasonable time, restore the premises to a condition satisfactory and acceptable to the Department of Land and Natural Resources, State of Hawaii.

SUBJECT, FURTHER, to disapproval by the Legislature by two-thirds vote of either the Senate or the House of Representatives or by majority vote of both, in any regular or special session next following the date of this Executive Order.

This executive order does not authorize the recipient of the set aside to sell or exchange or otherwise relinquish the State of Hawaii's title to the subject public land.

IN WITNESS WHEREOF, I have hereunto set my hand and  
caused the Great Seal of the State of Hawaii to be affixed.  
Done at the Capitol at Honolulu this 18<sup>th</sup> day of  
August, 2009.

  
Governor of the State of Hawaii

APPROVED AS TO FORM:

  
Deputy Attorney General

Dated: April 14, 2009

LEUTENANT GOVERNOR'S  
OFFICE

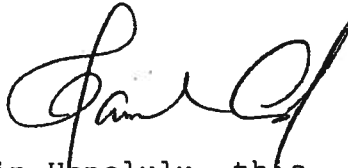
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STATE OF HAWAII

Office of the Lieutenant Governor

THIS IS TO CERTIFY That the within is a true copy of  
Executive Order No. 4287 setting aside land for public  
purposes, the original of which is on file in this office.

IN TESTIMONY WHEREOF, the Lieutenant  
Governor of the State of Hawaii, has  
hereunto subscribed his name and caused  
the Great Seal of the State to be affixed.



DONE in Honolulu, this \_\_\_\_\_ day of

\_\_\_\_\_, A.D. 200

AUG 18 AM 1:39

LIEUTENANT GOVERNOR'S  
OFFICE



STATE OF HAWAII

SURVEY DIVISION

DEPT. OF ACCOUNTING AND GENERAL SERVICES  
HONOLULU

October 24, 1968

C.S.F. No. 15,669

KOKEE AND KEKAHA DITCHES

Waimea (Kona), Kauai, Hawaii

*For tracing  
See H.S.S. Plat 3087-B*

Kokee (Main) Ditch: A ditch system of tunnels and open ditches over, across and under the Government (Crown) Land of Waimea, including portions of Napali-Kona Forest Reserve, Kokee State Park, Waimea Canyon State Park and Puu Ka Pele Forest Reserve, said ditch system as shown on Government Survey Registered H.S.S. Plat 3087-B.

Beginning at the Kokee Ditch Intake in Waimea Canyon at an elevation of 3,450 feet (more or less) of the Mohihi Stream, the ditch system traverses northwesterly by tunnel 1.4 miles to Waiakoali Stream at an elevation of 3,400 feet (more or less), the ditch system traverses northwesterly by tunnels, approximately 1.1 miles, crossing Kawaikoi Stream and continuing to Kawaikihana Stream at an elevation of 3,400 feet (more or less); thence in a southwesterly direction by tunnels, approximately 3.0 miles to a crossing at Kokee Stream at an elevation of 3,300 feet (more or less); thence westerly and southerly by tunnel and open ditches, approximately 3.4 miles in length to Puu Lua Reservoir, crossing Halemanu Stream at an elevation of 3,300 feet (more or less); thence from an outlet of Puu Lua Reservoir, southerly by tunnels and open ditches, approximately 3.0 miles to its junction with the West Branch of said Kokee Ditch on the ridge dividing Haleiele and Kukuipuha Valleys; thence southerly by open ditches approximately 2.7 miles to a point where the ditch crosses Kokee Road at an elevation of 2,170 feet (more or less).

EXHIBIT "A"

PRELIM. APPR'D.  
Department of the  
Attorney General

October 24, 1968

- 2 -

Kokee Ditch (West Branch):

Beginning at its junction with the Kokee (Main) Ditch on the ridge dividing Haleiele and Kukuipuha Valleys, the West Branch runs by open ditches, southwesterly to a point where the ditch crosses the boundary between Puu Ka Pele Forest Reserve and Portion of the Government Land of Waimea (CSF 15,648) for a distance of approximately 1.5 miles at an elevation of 2,600 feet (more or less).

Kokee (Main Ditch = 14.6 miles (more or less)

Kokee Ditch (West Branch) = 1.5 miles (more or less)

Total Length = 16.1 miles (more or less)

Kekaha Ditch: A ditch System of tunnels, siphons and open ditches over, across and under the Government (Crown) Land of Waimea, including portion of Puu Ka Pele Forest Reserve, said ditch system as shown on Government Survey Registered H.S.S. Plat 3087-B.

Beginning at the dams at Koaie Stream and Waimea River, at an elevation of 800 feet (more or less), the ditch system runs by tunnels, southerly along the west side of Waimea River for a distance of approximately 2.8 miles; thence crossing Waimea River at the Mauka Powerhouse, the system runs southwesterly by tunnels and open ditches along the easterly side of Waimea River, for a distance of approximately 4.4 miles; thence crossing Waimea River by steel Siphon and following along the westerly side of Waimea Canyon, by open ditches and tunnels in a southerly direction to the north boundary of the Ili of Kikiaola for a distance of approximately 2.4 miles.

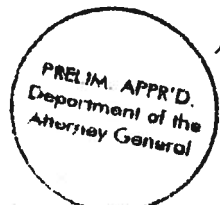
Total length of Kekaha Ditch = 9.6 miles

SURVEY DIVISION  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
STATE OF HAWAII

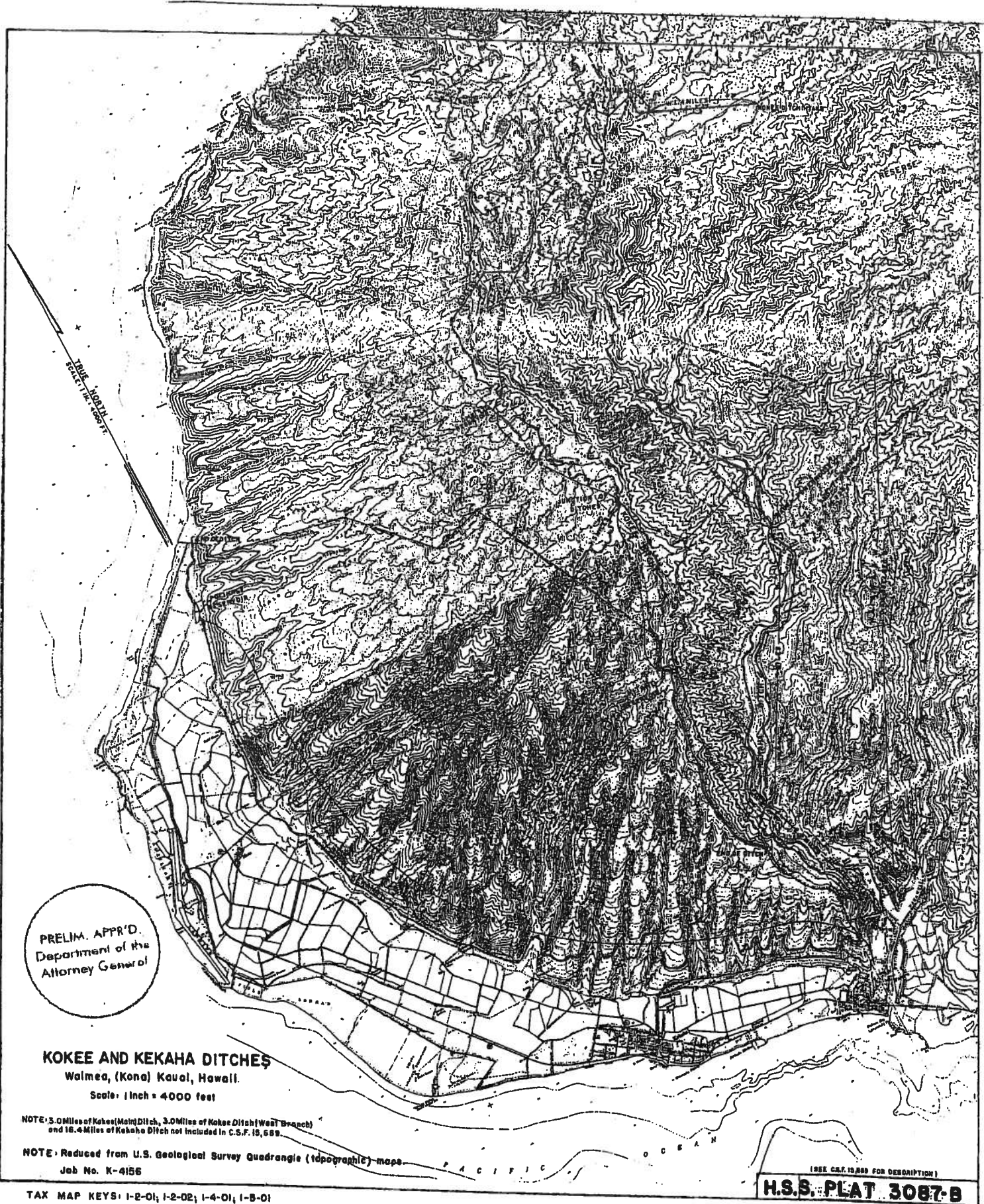
By:

*Akira Taga*  
Akira Taga  
Land Surveyor

ac







PRELIM. APPR'D.  
Department of the  
Attorney General

**KOKEE AND KEKAHA DITCHES**

Waimea, (Kona) Kaula, Hawaii.

Scale: 1 inch = 4000 feet

NOTE: 3.0 Miles of Kokee (Main) Ditch, 3.0 Miles of Kokee Ditch (West Branch)  
and 16.4 Miles of Kekaha Ditch not included in C.S.F. 15,689.

NOTE: Reduced from U.S. Geological Survey Quadrangle (topographic) maps  
Job No. K-4156

(SEE C.S.F. 15,689 FOR DESCRIPTION)  
**H.S.S. PLAT 3087-B**

TAX MAP KEYS: 1-2-01; 1-2-02; 1-4-01; 1-5-01

REDUCED NOT TO SCALE

**EXHIBIT "B"**

**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
AND  
THE AGRIBUSINESS DEVELOPMENT CORPORATION  
TMK No. (4) 1-4-001:002 (portion)**

This Memorandum of Understanding ("MOU") is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2011, by and between the STATE OF HAWAII, DEPARTMENT OF LAND AND NATURAL RESOURCES, by its Board of Land and Natural Resources ("DLNR") and the AGRIBUSINESS DEVELOPMENT CORPORATION ("ADC"), a public body corporate and politic and an instrumentality and agency of the State of Hawaii, (collectively, the "Parties"), to address certain management concerns relative to the set aside of the irrigation system, including the land underneath the water and the taking of water, in Kekaha, Waimea, Kauai identified as TMK No. (4) 1-4-001:002 (portion).

WHEREAS, at its meeting of December 9, 2005, under agenda item D-2 (Exhibit A), the Board of Land and Natural Resources ("Board") approved to recommend to the Governor, a set aside of lands to the ADC for irrigation system and Waimea (Mauka) hydro-electric power generation plant purposes. The Board further amended its approval by adding a condition that the ADC work cooperatively with DLNR's Division of State Parks ("State Parks") to ensure that ADC's management and control of the irrigation system would not adversely affect the Kokee State Park or the lessees at the Park.

WHEREAS, Governor's Executive Order No. 4287 ("EO") (Exhibit B), dated August 18, 2009, specifically set aside the control and management of the irrigation system described below, to the ADC. The EO conveyed a total of 16.1 miles of an irrigation system of tunnels and open ditches over, across and under the Government (Crown) Land of Waimea, including portions of Napali-Kona Forest Reserve, Kokee State Park, Waimea Canyon State Park and Puu Ka Pele Forest Reserve, said ditch system as shown on Government Survey Registered H.S.S. Plat 3087-B, called the Kokee Main Ditch and Kokee West Branch Ditch, together with the land underneath the water and the right to take water (the "irrigation system").

WHEREAS, the Kokee Main Ditch, included a total of 14.6 miles, more or less, consisting primarily of tunnels and open ditches beginning at the Kokee Ditch Intake in Waimea Canyon of the Mohihi Stream to Waiakoali Stream, crossing Kawaikoa Stream and continuing to Kawaikihana Stream; then, crossing the Kokee Stream to the Puu Lua Reservoir. From the outlet of the Puu Lua Reservoir, the tunnels and open ditches continuing to the West Branch of the Kokee Ditch on the ridge dividing Haleiele and Kukuipuha Valleys.

WHEREAS, the EO excluded Puu Lua Reservoir from the irrigation system. The irrigation system described in the EO ends at the intake of the Puu Lua Reservoir and then continues from the outlet of the Reservoir to the West Branch of the Kokee Ditch. The exclusion of Puu Lua Reservoir from the description of the irrigation system appears to be a drafting oversight. In spite of the exclusion, the Parties agree that the Puu Lua Reservoir is an important and integral part of the irrigation system that should be managed by a single entity to ensure systemic integrity and consistency and efficiency in operations and maintenance.

**EXHIBIT "D"**

WHEREAS, upon receipt of the Final Phase I Investigation Report issued in February 2009 by Kleinfelder West, Inc. and in anticipation of the set aside of the lands and operating under the assumption that the Puu Lua Reservoir was part of the irrigation system, the ADC took the initiative for the remediation and improvements of the Reservoir.

BE IT RESOLVED THAT this MOU is to confirm and clarify that, while the title to the land beneath the Puu Lua Reservoir remains with DLNR, the ADC, on behalf of DLNR, shall control and manage the Puu Lua Reservoir until such time when the EO is amended to include the Reservoir, which control and management shall include the improvements, maintenance and operations of the Reservoir.

BE IT FURTHER RESOLVED THAT State Parks reserves its rights to the water in the Reservoir to support its activities at the Kokee State Park and for its lessees at the Park.

BE IT FURTHER RESOLVED THAT the DLNR and ADC shall work together to amend the EO to include the Puu Lua Reservoir in the irrigation system.

IN WITNESS WHEREOF, the DLNR and the ADC have executed this MOU as of the date first above written.

Approved by the Board of Land and Natural  
Resources at its meeting held on \_\_\_\_\_.

Approved as to Form:

STATE OF HAWAII, BOARD OF LAND  
AND NATURAL RESOURCES

By: \_\_\_\_\_  
Deputy Attorney General

By: \_\_\_\_\_  
Name: William J. Aila, Jr.  
Title: Chairperson

Date: \_\_\_\_\_

Approved as to Form:

AGRIBUSINESS DEVELOPMENT  
CORPORATION

By: \_\_\_\_\_  
Deputy Attorney General

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: Alfredo Lee  
Title: Executive Director

DRAFT